

Notice of Allowability

Application No.

10/018,615

Applicant(s)

FITZ, WILLIAM R.

Examiner

Carl H. Layno *9/3/04*

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 08132004.
2. ☒ The allowed claim(s) is/are 1-34.
3. ☒ The drawings filed on 11 March 2002 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment which was received by the Office on August 13, 2004.

2. Claims 28-34 have been added. Claims 1-34 are now active.

Terminal Disclaimer

3. Acknowledgment is made of applicant's Terminal Disclaimer which was received by the Office on August 13, 2004.

Double Patenting

4. In view of applicant's arguments and Terminal Disclaimer received by the Office *supra*, the Examiner is withdrawing the obviousness-type double patenting rejections based upon the 6,314,325-B1 and 6,014,588 U.S. Patents, which were made against claims 1-3 and 8-12 in the last Office action.

Allowable Subject Matter

5. Claims 1-34 are allowed.

Reasons for Allowance

6. The following is an examiner's statement of reasons for allowance:

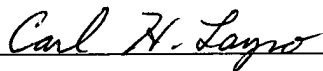
Art Unit: 3762

The Examiner deems claims 1-3 and 8-12 to be allowable over the prior art because the Examiner could not find the applicant's claimed pain relief apparatus features of electrodes located near the spinal nerve root for stimulating the medial and articular branches with an energy level not strong enough to depolarize or hyperpolarize the spinal cord itself.

Claims 13-27 are deemed to be allowable for the same reasons given previously in the "reasons for the indication of allowable subject matter" in the last Office action.

Newly submitted independent claim 28 recites a method for ameliorating pain and treating vascular disorders including the unique step of "providing sufficient energy through the stimulator to hyperpolarize at least a portion of the central nervous system". The Examiner could find no prior art references teaching this capability; consequently, the Examiner also deems this claim and its depending claims to be allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."



CARL LAYNO
PRIMARY EXAMINER

CHL
9/3/2004